



U.S. Department
of Transportation
**Federal Transit
Administration**
Office of Safety and Security

FTA Drug And Alcohol Regulation *Updates*

Fall 1997

Issue 6

Introduction....

The Federal Transit Administration (FTA) published its final rules on prohibited drug use (49 CFR Part 653) and the prevention of alcohol misuse (49 CFR Part 654) on February 15, 1994. Shortly thereafter, the FTA published the *Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit* to provide a comprehensive overview of the regulations.

Since the *Guidelines* were published there have been numerous amendments, interpretations, and clarifications to the Drug and Alcohol testing procedures and program requirements.

This publication is being provided to update the *Guidelines* and inform your transit system of all of these changes. This Update is the sixth in a series.

Inside....

FTA Audit Process	2
Proposed Rule Change	3
Recordkeeping & Reporting.....	4
Contractor Compliance	5
Resource Materials	6

FTA Audits Well Received

The FTA drug and alcohol testing audit program is well underway. The FTA audits assess the compliance of selected transit systems' drug and alcohol testing programs with the regulatory requirements set forth in 49 CFR Part 653 and Part 654. Several transit systems have completed the process and for the most part, the audits have been well received.

The Miami Valley Regional Transit Authority (MVRTA) in Dayton, Ohio was among the first systems to be audited. Mr. Al Gray, the program manager, expressed very positive comments about the audit process. *"The MVRTA has a very strong commitment to safety. We did our best to implement a drug and alcohol testing program that was compliant with the regulatory requirements; and now with the input from the audit I am even more confident that our program is a good one that will serve the system well."*

Similarly, other systems indicated that the audit process was a learning experience for everyone. Even with the best of intentions, systems have had difficulty developing programs that are compliant in all respects. The audits provide a mechanism for helping systems identify areas where their programs require improvement. But just as important, the audits validate those parts of a system's program that are being done well and are consistent with the regulatory requirements.

The audit process is very comprehensive,

covering every aspect of your drug and alcohol testing program. It may seem overwhelming at first, but once completed, you will be aware of very specific corrective actions that are necessary to bring your program into compliance. Mr. Jack Fitch of the Jacksonville Transportation Authority (JTA) indicated that the JTA learned a lot from its audit. Questions that were previously unanswered were answered; requirements that had been misunderstood were clarified; and problem areas were identified and corrected.

Mr. Fitch attributes the success of the JTA audit, in part, to the professional and positive attitude of the audit team members. Mr. Fitch went on to say that he also believed that openness and good

communication among audit team members, JTA staff, and subcontractors were key to the success of the audit. *"The audit was not adversarial. All those involved [the auditors, transit system staff and subcontractors] realized that we shared the same goal - to develop and maintain a compliant program that meets the unique needs of our transit system. Once we realized this, the process went very smoothly."*

For more information about the audit process, see the articles presented on pages 2 and 3 of this Update.

FTA Audit Process

Where To Find?.....

49 CFR Part 653 , Prevention of Prohibited Drug Use in Transit Operations

February 15, 1994
Federal Register Vol. 59
Pages 7572-7611

Amended:

December 2, 1994
Federal Register Vol. 59
Pages 62217-62231
Primary Topic: Random Drug Testing Rates

August 2, 1995
Federal Register Vol. 60
Pages 39618-39620
Primary Topic: Exemption of Volunteers and Post-Accident Testing Provision

Technical Corrections:

March 6, 1995
Federal Register Vol. 60
Pages 12296-12300
Primary Topic: Corrections and Clarifications

The information presented on this page should be used to update Chapter 9 of the Implementation Guidelines.

Ways to Prepare for Audit

If you are selected to be audited, there are three primary things that you can do to prepare and make the process go smoothly.

First, you should make every effort to ensure that all relevant personnel are available during the site visit. This will include individuals within your organization as well as vendors, safety-sensitive subcontractors, and their respective vendors.

The vendors will include the collection site, Medical Review Officer, Breath Alcohol Technician, and Substance Abuse Professional. The safety-sensitive contractors that will be included in the audit will be identified in the notification letter that you receive from FTA. If you have not already done so, inform those individuals/agencies of the purpose, nature, and extent of the FTA audit, and request that they

be available either in person or by telephone during the time of the on-site visit. Also, impart to them the seriousness of the audit and your need for their complete cooperation.

Second, upon receipt of the notification letter from FTA, immediately notify the individuals within your organization and your covered contractors regarding the specific materials that FTA has requested. You will be given two weeks to collect, copy, and submit the materials to FTA. The FTA prefers that you collect all materials from your contractors and submit them along with your materials in the same package. You will be requested to send one copy directly to FTA and two additional copies to the Contractor Audit Team.

Third, you will need to make the necessary

arrangements to have ready access to all relevant records and documents that are required to be maintained by the rules, including individual test results. Please note that this release of information is required under Section 653.7(c) of the drug rule and Section 654.55(c) of the alcohol rule. If any records or information on the drug and alcohol testing program are stored off-site or maintained by a consortium, the information must be retrieved and available on-site for review by the audit team. Explanations that such records are stored in another city/office are not acceptable. The audit team will also need to obtain documentation from vendors and your safety-sensitive contractors. See page 4 of this Update for additional information on recordkeeping requirements.

MIS Forms Unchanged

The MIS forms used to report the results of the drug and alcohol testing program for calendar year 1997 will be the same as those used to report calendar year 1996 data. The standard forms can be found in the back of each regulation and in Appendix I of the *Implementation Guidelines*.

When compiling data to be reported, make sure that all information can be easily re-accessed as the FTA auditors will attempt to reconstruct the data presented in the forms from your files during an FTA audit.

1998 Random Rates To Be Announced in December

The 1996 drug and alcohol test results for the transit industry will be available by the end of the calendar year. The information was obtained directly from MIS forms submitted by grantees and their contractors earlier in the year. Based on this information, the 1998 random test rates for alcohol and drugs will be determined. These rates will be published in the Federal Register in December and the next Update, scheduled for publication in January.

Please note that the annual random percentage rates established in the drug and alcohol rules are minimum rates. An employer is allowed to exceed those rates.

Recordkeeping & Reporting

Where to Find?

49 CFR Part 40, Procedures for Transportation Workplace Drug Testing Programs

Amended:

February 15, 1994
Federal Register Vol. 59
Pages 7340-7366
Primary Topic: DOT Alcohol Testing Procedures
Procedures for Split Sample
Procedures for Drug Testing

August 19, 1994
Federal Register Vol.59
Pages 42996-43018
Primary Topic: Clarified Urine Specimen and Collection Procedures and Clarified Alcohol Testing Procedures

April 19, 1995
Federal Register Vol.60
Pages 19535-19537
Primary Topic: Standardized Chain of Custody and Control Form

April 20, 1995
Federal Register Vol.60
Pages 19675-19681
Primary Topic: Established Procedures for Use of Non-evidential Alcohol Screening Devices

The information presented on this page should be used to update Chapter 9 of the *Implementation Guidelines*.

Paper Trails are Essential

Each employer's recordkeeping must be exhaustive so as to withstand any challenge and to document policies, procedures, and the integrity of the drug and alcohol testing program. Every component of the program must be documented and a paper trail created that can be followed regarding every test decision made. The following types of paper trails must be provided:

Pre-Employment Drug Tests - A Chain of Custody and Control Form and negative test result must be available for each new hire employee. The documentation should include the written notice to each applicant with appropriate signature acknowledging receipt of notification, date and time of test, test result, and hire date.

Post-Accident Tests - Accompanying each accident or incident report should be documentation regarding the decision to test or not to test. First, documentation should indicate whether or not the circumstances constituted an accident under the regulatory definition. Second, documentation should indicate whether or not the employee (driver, dispatcher, maintenance worker) was completely discounted as a contributing factor. The time of the accident and time of the test should be noted. If the test was delayed beyond two hours from the time of the accident, the reason for the delay must be noted. Chain of Custody and alcohol testing forms must be available for each qualifying accident, along with test results.

Random Testing - Documentation must be available regarding the random selection process including how numbers are assigned, how they are drawn, and how the drug and alcohol manager is notified. The number selections, whether in the form of a computer printout or manual worksheet must be maintained for each draw. Likewise,

information should be maintained on when the test was scheduled, when the individual was notified and when the test was conducted. Also, documentation should indicate how it was determined if a test was going to be for drugs and alcohol or drugs only. Chain of Custody and alcohol testing forms must be available, with test results for each test conducted.

Reasonable Suspicion - Documentation regarding the circumstances associated with the reasonable suspicion determination must be maintained. The time of the determination should be noted along with the time of the test. The documentation must include the objective factors observed by the trained supervisor regarding the contemporaneous behavior, speech, appearance, or body odor of the individual, witness statements, and employee response. Chain of Custody and/or alcohol test forms must be maintained for each reasonable suspicion determination as well as test results.

Return-to-Duty and Follow-up Testing - Any return-to-duty tests must have corresponding documentation that the individual was referred to the Substance Abuse Professional (SAP) for assessment, the recommended treatment program was successfully completed, and documentation that the SAP recommended that the individual be allowed to return to work. Likewise, follow-up tests must have corresponding documentation of the SAP's recommendation for frequency and duration of follow-up testing. Chain of Custody and alcohol testing forms for return-to-duty and follow-up tests that coincide with the SAP's recommendations as well as test results must be available.

Document SAP Referrals

The FTA's drug and alcohol testing regulations are silent on whether an employer should dismiss an employee that has tested positive or whether they should be allowed to return-to-duty after successfully completing a rehabilitation program. This decision is left solely up to the employer. However, in either case, the regulations do require that the individual be referred to a substance abuse professional for an assessment and that they are informed of resources available to resolve problems associated with substance abuse.

Consequently, you must maintain documentation on SAP referrals that corresponds to every positive test result (except for pre-employment tests), regardless of whether the employee is dismissed, re-assigned or allowed to return to safety-sensitive duty.

Contractor Compliance

Provide Your Contractors Tools and Technical Assistance to Ensure Compliance

As the FTA grantee or sub-grantee, you are fully responsible for the compliance of your system with the drug and alcohol testing regulations, including your contractors that perform safety-sensitive job functions. (Note: Section 5311 and rural Section 5309 maintenance contractors are exempt.)

Consequently, the FTA audit process includes detailed reviews of the drug and alcohol programs of your covered contractors. In addition, the audit will assess the methodology being used by your system to ensure that all covered contractors are in compliance with the rules. Covered

contractors include maintenance contractors performing routine, on-going repair or maintenance work.

Contractors that perform less routine activities such as warranty, overhaul, component

rebuilding or rehabilitation work are not included. Similarly, contractors that supply newly manufactured or reconditioned equipment are excluded, as are facility construction workers.

You should not assume that your contractors are knowledgeable of the regulatory requirements or that they have compliant policies or programs. It is your responsibility to take the necessary actions to ensure their compliance. You are encouraged to communicate the requirements to your contractors and, if necessary, provide them with tools and technical assistance, such as:

- ◆ Copies of regulations, *Implementation Guidelines*, *FTA Drug and Alcohol Regulations Updates*, and *Random Drug Testing Manual*;
- ◆ Education/training of drug and alcohol program managers;

- ◆ Training of safety-sensitive employees and supervisors;
- ◆ Assistance in establishing a scientifically valid random selection process;
- ◆ Develop specifications and evaluation criteria for testing service vendors;
- ◆ Provide a detailed policy review;
- ◆ Assistance in the establishment of recordkeeping procedures; and
- ◆ Preparation of MIS reports.

If your contractor(s) does not have the ability to implement a compliant program, you might wish to include them in your own program (i.e., random selection process, testing services). Under this scenario, the contractor would still be responsible

for program administration, but you would have greater control over the technical aspect of their testing program.

You should also conduct on-going oversight of your contractors to ensure that their programs remain in compliance. Oversight functions might include requiring and monitoring periodic (i.e., monthly, quarterly) management reports on their testing programs, including policy modifications, changes in testing vendors, training conducted, and the number, type, and results of tests conducted.

You must take whatever actions are necessary and appropriate to ensure contractor compliance. If contractors are unwilling or unable to come into compliance, you must discontinue the use of this contractor for the provision of safety-sensitive duties, or jeopardize your FTA funding.

Where To Find?.....

Part 40 Amendments, Con't.

July 16, 1996
Federal Register Vol.61
Pages 37015-37017
Primary Topic: Use of Labs Outside the U.S.

July 17, 1996
Federal Register Vol.61
Pages 37222-37224
Primary Topic: Expansion of SAP Definition

July 19, 1996
Federal Register Vol.61
Pages 37693-37700
Primary Topic: Insufficient Specimen

Conforming Products List

Evidential Breath Testing (EBT) Devices
January 30, 1996
Federal Register Vol.61
Pages 3078-3080
Primary Topic: Conforming Products List (CPL)

Note: This list will be updated periodically.

Non-evidential Testing Devices
August 15, 1995
Federal Register Vol.60
Pages 42214-42215
Primary Topic: Initial Alcohol Screening Devices

Note: This list will be updated periodically.

The information presented on this page should be used to update Chapters 2, 5, and 9 of the *Implementation Guidelines*.

Resource Materials

Who Should Be Receiving This Update?

In an attempt to keep each transit system well informed, we need to reach the correct person within each organization. If you are not responsible for your system's Drug and Alcohol program, please forward this update to the person(s) who is and notify us of the correct listing. If you know of others who would benefit from this publication, please contact us at the following address to include them on the mailing list. This publication is free.

RLS & Associates, Inc.
3131 South Dixie Hwy., Ste 202
Dayton, Ohio 45439
Phone: (937) 299-5007
FAX: (937) 299-1055

Urine Specimen Collection Procedures Guideline

Drug Testing Procedures Handbook, Employers Guide to 49 CFR Part 40

Substance Abuse Professional Procedures Guidelines for Transportation Workplace Drug and Alcohol Testing Programs

Medical Review Officer Guide for Regulated Transportation Industries

USDOT, Office of Drug Enforcement and Program Compliance, (202) 366-3784

Bulletin Board Service **FTA, Office of Safety & Security, (800) 231-2061**

FTA World Wide Web home page: <http://www.fta.dot.gov/>

Drug and Alcohol Consortia Manual

Drug and Alcohol Testing Results; 1995 Annual Report

Random Drug Testing Manual

Substance Abuse in the Transit Industry

Employee Assistance Program for Transit Systems

FTA, Office of Safety and Security, (202) 366-2896

USDOT Drug and Alcohol documents FAX on Demand 1 (800) 225-3784

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